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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

ORDER

Iqbal Singh Vs. State of Rajasthan.
S.B. CR. REVISION PETITION NO.984/2006

Against order dated 26.09.2006 passed by Addl.
Sessions Judge (Fast Track), Hanumangarh in
Criminal Misc. Case No.11/2006.

DATE OF ORDER :: 6th November, 2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. Pankaj Sharma for petitioner.

BY THE COURT:

By filing the present revision petition, accused
Iqbal Singh challenges the order dated 26.09.2006 passed
by Addl. Sessions Judge (Fast Track), Hanumangarh in
Criminal Misc. Case No.11/2006, rejecting the application
moved under Sec.311 of the Cr.P.C. .

Heard learned counsel for the petitioner.

The contention of learned counsel for the petitioner is that the learned trial Court committed serious illegality in rejecting the prayer made in the application moved under Sec.311 of the Cr.P.C. to recall prosecutrix PW6 Suman and PW7 Kumari Jyoti for the purposes of cross examination because the counsel who was conducting the case earlier did not address the cross examination in relation to the age and that is an important aspect of the law therefore, the above witnesses were required to be recalled. It has been submitted that in the interest of justice and in view of the provisions contained in Sec.311 of the Cr.P.C., the application moved before the trial Court was required to be accepted.

I have considered the submissions made before me.

It appears that after recording of statements of prosecutrix PW6 Suman and PW7 Kumari Jyoti before the learned trial Court, an application was moved for recalling the above witnesses after change of lawyer and the learned trial Court found that there was no reason to allow the

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application because the prosecutrix in the case was cross examined at length and the fact of the age of the prosecutrix was well within the knowledge of the defence from very beginning as at the stage of framing charge there was specific mention, and therefore the accused petitioner being in jail, the application was not required to be allowed and the same was rejected.

The above reasonings given by the learned trial Court, in my humble opinion, appears to be just, reasonable and proper for the reason that in the instant case PW4 Dr. Vinod Chaumwal was examined in relation to the age of the above two witnesses viz., Prosecutorix Kumari Suman, and Kumari Jyoti. A lengthy cross examination has been addressed to PW4 Dr. Chaumwal, and therefore, to say that on account of not asking question regarding the age from the witnesses, the witnesses should be recalled, in my humble opinion would not be a correct legal proposition.

I have carefully perused the statement of THE doctor and the statements of PW6 Sunita and PW7 Kumari Jyoti. Both the witnesses have been cross examined at

length. The impugned order further reveals that a senior counsel was conducting the case earlier, therefore, to presume that since on previous occasion cross examination could not be addressed to the witnesses on a particular point then subsequently after change of lawyer if an application is moved to recall the witnesses, in my humble opinion, cannot be a reason to recall the witnesses for cross examination. Great agony is faced by witnesses and particularly a witness who is victim of kidnapping and rape then to recall them in a casual manner cannot be said to be the intention of Sec.311 of the Cr.P.C.

The learned counsel for the petitioner has placed reliance on a decision reported in 2001 Cr.L.J. 3907 (All.) (Riyazuddin Vs. State of U.P.), the facts of which are different than the facts of the present case and same are clearly distinguishable. In that case, the counsel, who was conducting the case, was not having copies of the documents and was also not having the statements recorded under Sec.161 of the Cr.P.C. with him. Therefore, in the exceptional circumstances, application moved under Sec.311 of the Cr.P.C. was allowed whereas in the present

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case proper opportunity has been provided to the defence and the defence has utilized the opportunity provided to them and all the witnesses in the case have been cross examined at length in relation to age. PW4 Dr. Vinod Chaumwal clearly and categorically stated about the age and this witness was examined earlier in time as PW6 Suman and PW7 Jyoti were examined at belated stage. Thus, after carefully examining the matter and also perusing the reasons given by the learned trial Court in the impugned order under challenge, I do not find any illegality or irregularity in the order passed by the trial Court, which may require interference by this Court in revisional jurisdiction.

In view of above, the revision petition is devoid of merit and requires to be summarily.

In the result,, the revision petition stands dismissed accordingly.

(SATYA PRAKASH PATHAK)J.

/jpa